Supreme Court, U. S.
FILED
MAY 19 1975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-1450

FRANCIS STORY GOELTZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TENTH CIRCUIT

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INDEX

Page

DECISION BELOW.....1

JURISDICTION.....2

QUESTIONS PRESENTED.....3

CONSTITUTIONAL PROVISIONS INVOLVED.....5

STATEMENT OF CASE.....7

REASONS FOR GRANTING WRIT.....11

CONCLUSION.....39

CASES CITED

Alderman v. Philadelphia Housing Authority, 496 F.2d 164 (1974)..... 13,30 13,30

A. Magnano Co. v. Hamilton, Atty. 54 S.Ct. 599, 292 U.S. 40..... 16

Angello v. U.S., 269 U.S. 20..... 28

Aston v. Kentucky, 384 U.S. 195..... 12

Barker v. Wingo, 407 U.S. 514..... 38

Barton v. U.S., 263 F.2d 894..... 35

Burnet v. Guggenheim, 53 S.Ct. 369, 288 U.S. 280..... 16

Bussey v. U.S., 466 D.2d. 1059..... 12

Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900..... 12

Caruthers v. Peninsular Life Ins. Co., 150 Fla. 467, 7 So.2d. 841, 842..... 22

Carroll v. U.S. 267 U.S. 132..... 28

Carter v. Carter Coal Co. 298 U.S. 238, 56 S.Ct. 855..... 14

Clendaniel v. Conrad, 35 S.Ct. 203, 335 U.S. 712..... 17

Commonwealth Coatings Corp. v. Continental Casualty Co. 393 U.S. 145..... 33

Cramp v. Board of Public Information, 386 U.S. 278-287, 82 S.Ct. 275..... 13

Cranston v. Freeman, D.C. N.Y., 1968, 190 Fed. Supp. 785,..... 33

Cromwell v. Tate (Va) 7 Leigh 301..... 22

David v. Alaska, 39 L.Ed.2d. 347 at page 555..... 33

Dickey v. Florida 398 U.S. 30..... 38

Dickey v. Raisin Production Zone 1, 151 P2d 505..... 15

Doe v. McMillan, 412 U.S. 306..... 13

Dred Scott v. Sanford, 19 U.S. 393..... 14

Duval v. Atlantic Coast Line Railroad Co. 134 NC 331..... 19

E.G. Wolfoson v. Pamieri, C.A.N.I., 1968, 396 F.2d. 122..... 33

Farmer v. Loofourrow, 267 p.2d. 113..... 26

F.T.C. v. Mandel Bros., Inc. 79 S.Ct. 818..... 17

Giordenello v. U.S. 357 U.S. 480..... 27

Gooding v. Wilson, 31 L.ed.2d. 408..... 15

Hall v. Cotton, 167 Ky. 464....

Homer Elec. Assn. Inc. v. City of Kenai, 423 P.2d. 285.... 17

Hunter v. Hunter, 180 F.2d 510 15

Int'l. Society for Krishna Cons., Ins. v. Conlisk, 374 F.Supp.. 1010..... 13,30,31

Johnson v. Miss., 403 U.S. 10.. 35

Kirksey v. Bates (Ala) 7 Port 529 20

Kovacs v. Cooper, 336 U.S. 77 13

Lake County v. Rollins, 130 U.S. 662..... 14

Looney v. Crane Co., 245 U.S. 178 14

Lovesei v. Commonwealth of Va., 72 S.Ct. 2469..... 16

Marbury v. Madison, 1 U.S. 137..... 14

Mayberry v. Penn., 400 U.S. 455..... 35

McNary v. U.S., 195 U.S. 27..... 16

Mid-Continent Petroleum Corp. v. N.L.R.B., Ca., 74 S.Ct. 71..... 24

Morrison v. U.S., C.D.C., Tex. 1969, 321 Fed. Supp. 286..... 33

Mutual Loan Co. v. Martell 222 U.S. 225..... 18

Myles Salt Co. v. Iberia and St. M. Drainage District, 239 U.S. 478..... 24

New York Times v. U.S., 403 U.S. 713..... 16

Patton v. U.S., 281 U.S. 276..... 14

Perry v. Commerce Loan Co. 86 S.Ct. 852..... 16

People v. Herk, 44 N.Y. 5 2d 444..... 25

Perrine v. Cheeseman, 11 J NJL 174... 22

Phummer v. Colombus, 38 L.Ed. 2d 3... 15

Piper v. Willcuts, C.C.A. Minn., 64 F.2d. 813..... 15

Polk v. the State Bar of Texas, 374 F·Supp. 784..... 31

Price v. U.S., 262 F.2d 684..... 28

Russo v. Central School District, 469 F.2d. 623..... 13

Saco v. Wentworth, 37 Me. 165..... 25

Saldana v. U.S., 365 U.S. 646..... 32

Shaituck v. Gallaher, 218 F.2d 428..... 16

Smith v. Goguen, No. 72-1254, March 25, 1974, 39 L.Ed.2d. 605..... 15

Smity v. California, 316 U.S. 147..... 13

Solon v. Williamsburgh Sav. Bank, 114 N.Y. 132..... 21

Sproles v. Binford, 286 U.S. 374.. 18

State v. Wittles, 118 Minn. 364..... 18

Stewart v. Calun 11 W.A.L.L. (78 U.S.) 493-504..... 23

Stillman v. Lynch 192 P. 272..... 14

St. John v. New York 201 U.S. 633..... 24

Strunk v. U.S., 412 U.S. 434 38

Tollett v. U.S., 485 F.2d. 1094 15

Trop v. Dulles, 356 U.S. 86..... 15

Tuttle v. National Bank, 44 N.E. 984..... 24

U'Ren v. Bagley, 245 P. 1074.. 32

U.S. v. Bologna, 181 F.Supp. 706..... 16

U.S. v. Butler, 297 U.S. 1... 14

U.S. v. Congress of Industrial Organizations et. al., 68 S.Ct. 1349..... 16

U.S. v. Cooper Corp. 61 S.Ct. 742..... 24

U.S. v. Harris, 106 U.S. 269... 18

U.S. v. Marion, 404 U.S. 307... 33

U.S. v. O'Brien, 391 U.S. 367.....13 , 24

U.S. v. Patterson, 456 F.2d.1135.....13,16,1 8

U.S. v. Reynolds, 235 U.S. 133... 24

U.S. v. Universal C.I.T. Credit Corp., 73 S.Ct. 227.. 16,18

U.S. v. Viale, 312 F.2d. 595 28

U.S. v. Walter, 263 U.S. 15... 18

Vermilya Brown Co. Inc. et.al. v. Connell et. al., 69 S.Ct. 140 15

Visual Education v. Koeppel, 268 So.2d. 22..... 13

Whitney v. Wyman, 11 O.T.T.O. (101 U.S.) 392..... 23

Yancey v. Fidelity and Casualty Co., 100 S.E.2d..... 28

Yu Cong Eng. v. Trinidad, 271 U.S. 500..... 18

IN THE

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October Term, 1974

No. _____

FRANCIS STORY GOELTZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

Petitioner prays that a Writ of Certiorari issue to review the Decision of the U. S. Court of Appeals, Tenth Circuit, entered March 21, 1975.

DECISION BELOW

The United States Court of Appeals, Tenth Circuit, affirmed the Judgement of the United States District Court for the District of Utah, Central Division, entering their Opinion and Judgement on March 21, 1975 (D.C. No. CR-24-73).

The Opinion in full is appended herein, Appendix A.

The District Court did not render an opinion.

JURISDICTION

There exists an important question of Federal Law which has not been, but should be, settled by this court.

There has been a Federal question decided by the Court of Appeals in a manner which conflicts with applicable decisions of this court.

The Court of Appeals has so far sanctioned a departure by the Lower Court, as to call for an exercise of this court's power of supervision.

The United States Court of Appeals, Tenth Circuit, entered a judgement in this matter on March 21, 1975 (D.C. No. CR-24-73).

On April 15, 1975, Petitioner filed an Application for Extension of Time within which to file a petition for Writ of Certiorari with the United States Supreme Court. An order from the court No. A-885, dated April 18, 1975, extended the time for filing to May 20, 1975.

Jurisdiction of the United States Supreme Court is invoked under 28 U.S.C., Sec. 1254 (1).

QUESTIONS PRESENTED

I. Does the application of 18 U.S.C., Section 701, to the conduct of Petitioner:

   A. Do violence to Petitioner's First Amendment rights to free speech and freedom of expression?

   B. Strain the law beyond the intent of the enacting legislative body?

   C. Require unreasonable alteration of the words INSIGNIA, IDENTIFICATION AND BADGE, either in legal or common English language?

II. Does the denial of a jury trial to Petitioner on statutory petty offense grounds:

   A. Extend the Common Law beyond the traditional bounds?

   B. Apply when Petitioner was granted a JURY TRIAL at the original arraignment, and subsequently had the JURY TRIAL withdrawn two days prior to the trial, thus denying Petitioner the Fifth Amendment right to Due Process of Law?

III. Were Petitioner's rights under the Fourth Amendment to be protected against unreasonable search and seizure and warrantless arrest violated?

IV. Was selective arrest and prosecution amounting to bad faith and harrassment employed by the IRS in order to suppress legitimate protest and in violation of Petitioner's rights under the First and/or Fifth Amendments?

V. Was the trial judge biased against Bray and/or Petitioner, thus depriving the Petitioner of his right to an impartial trial as guaranteed by the Sixth Amendment, the provisions of 28 U.S.C.A., 144, and due process of law?

VI. Should Petitioner's Motion for Severance have been granted?

VII. Was Petitioner's right to a speedy trial under the Sixth Amendment abrogated when the government failed to bring the case to trial?

CONSTITUTIONAL PROVISIONS INVOKED

U.S. CONST. 1st Amend.:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. 4th Amend.:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. 5th Amend.:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person

be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. 6th AMEND.:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. CONST. 8th AMEND.:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF CASE

Jurisdiction of the United States District Court for the District of Utah, Central Division, occurred as the purported crime is a violation of 18 United States Code Section 701, and took place in Salt Lake City, Utah, within the jurisdiction of the court.

The Petitioner, Francis S. Goeltz, is and has been for over six years a very dedicated Conscientious Objector to procedures employed by government agencies which result in violence to the individual rights of the citizenry.

To the same end, the Petitioner has, for over three years, co-led a group which seeks the impeachment of Federal Judge Willis W. Ritter.

Petitioner was arrested without a warrant or formal charge by FBI and IRS agents on the night of April 19, 1973, and lodged in the Salt Lake County Jail. Petitioner, along with Robert George Wray and Karl Jack Bray, co-defendants, was charged by Misdemeanor Information, R1, Vol. I by the U. S. Attorney on April 20, 1973, of violating Title 18, United States Code, Section 701, ILLEGAL POSSESSION OF INTERNAL REVENUE INSIGNIA.

The affidavit for Issuance of Arrest Warrant by the U. S. Attorney is dated April 20, B 73, R2, Vol. I. The Warrant for Arrest of Petitioner is dated April 20, 1973, R3, Vol. I.

Petitioner, along with Bray and Wray, in full waist and leg chains, handcuffs and leg irons, was presented by the U. S. Marshall before the U. S. Magistrate on April 20, 1973. He was released on his own recognizance, R8, Vol. I.

Petitioner, with attorneys, was before Chief Judge Ritter, and ready for trial, on July 26, 1973, for Arraignment and Hearing on Motions. Vol. I. Petitioner pleaded not guilty. The Motion for Severance, R20, Vol. II, was denied, with leave to bring up the Motion again on the morning of the Trial. The Motion to Compel Disclosure, R23, Vol. II, was denied. The Motion to Dismiss, R22, Vol. II, was denied. The Motion to Suppress, R24, Vol. II, was deferred and then denied on March 11, 1974, Vol. II. Motion for JURY TRIAL was granted. The case was set down for JURY TRIAL on July 30, 1973, Vol. I, p. 15, R26, R27.

The U. S. Attorney filed a Bill of Particulars on July 27, 1973.

Notice vacating the JURY TRIAL for July 30, 1973, was mailed July 27, 1973.

A notice was mailed January 7, 1974, for Calling of Calendar and JURY TRIAL on January 9, 1974.

JURY TRIAL and Hearing on Petitioner's motion was again vacated on January 9, 1974. The Calling of Calendar and JURY TRIAL and Hearing on Petitioner's Motions for Severence and to Suppress and reset for February 4, 1974, by mailed notice January 22, 1974.

Bray timely filed an affidavit and Notion, R50 and 51, for Removal of Chief Judge Ritter for Prejudice.

Bray timely filed a Petition for a Writ of Mandamus or Writ of Prohibition, 19CA Misc. No. 74-8036, and the Tenth Circuit issued a Writ to Show Cause, on or before March 29, 1974, to the Hon. Willis W. Ritter, Chief Judge, R89.

The JURY TRIAL and Hearing of motions was again delayed from February 4, 1974.

On February 22, 1974, government took initial action to obtain their witnesses.

On March 11, 1974, Motions were presented by Petitioner's counsel and co-defendants. Petitioner's Motion to Sever was denied, Vol. II, p.3. Petitioner's new Motion to Dismiss was denied, Vol. II., p. 5. The Motion to Suppress was denied at that time with leave to renew it at the trial.

On March 13, 1964, Judge Ritter tried all three defendants together, without a jury, and found all three defendants guilty as charged. Notice of Appeal was timely filed, R88. The Hon. Judge Lewis, of the Tenth Circuit Court, signed an order March 25, 1974, that Petitioner be released on his own recognizance pending appeal.

On March 18, 1974, Petitioner filed a Notice of Appeal to the United States Court of Appeals, Tenth Circuit. The Tenth Circuit Court, January Term, 1975, heard appeals by attorneys for Petitioner, Bray and Wray on February 28, 1975. The judgement of the lower court was affirmed and judgement in accordance with that opinion was entered on March 21, 1975.

REASONS FOR GRANTING WRIT

I. DOES THE APPLICATION OF 18 U.S.C., SECTION 701, TO THE CONDUCT OF PETITIONER:

A. DO VIOLENCE TO PETITIONER'S FIRST AMENDMENT RIGHTS TO FREE SPEECH AND FREEDOM OF EXPRESSION?

18 U.S.C. Section 701

"Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than six months, or both. June 25, 1948, c. 645, 62 Stat. 731."

1. A. The application of 18 U.S.C. Section 701, to the conduct of Petitioner, does violence to the First Amendment rights of Petitioner by inordinately and reprehensibly sanctioning the means of philosophical expression and action afforded him. Consequently, Petitioner is unable to fully participate in the open dialogue guaranteed free men. This without Due Process of Law.

The First Amendment rights are historically given little restraint, for the growth and refinement of a Free People depends in large measure upon their access to diverse opinions. In Aston vs. Kentucky, 384 U.S. 195, the U. S. Supreme Court states, "The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that set us apart from the totalitarian regimes...." and "When First Amendment rights are involved, we look even more closely lest under the guise of regulating conduct that is reachable by police power, freedom of speech or of the press suffer."

"Freedom of the press was not guaranteed solely to shield persons engaged in newspaper work. The larger purpose was to protect public access to information." See Bussey vs. U.S., 466 F2d 1059. In Cantwell vs. Connecticut, 310 U.S. 296, 60 S.C.T. 900, the Cantwell court took great care to emphasize that the First Amendment embraced not only the freedom to believe, but the freedom to act on behalf of one's beliefs as well. 310 U.S. at 303.

Further amplification is at Kovacs vs. Cooper, 336 U.S. 77 69 S.Ct. 448; Russo vs. Central School District, 469 F.2d 623; Visual Education v. Koeppel, 268 So.2d 22; Smity v. California 316 U.S. 147, 80 S.Ct. 215; Cramp v. Board of Public Information 386 U.S. 278-287, 82 S.Ct. 275.

Application of Section 701 to Petitioner results in Prior Restraint on First Amendment rights. In Alderman v. Philadelphia Housing Authority, 496 F.2d 164 (1974) the court stated that, "Any system of prior restraints comes to a court bearing a heavy presumption against its validity and, before it may be deemed justified, government must offer compelling proof that it is essential to a vital government interest. International Soc. for Krishna Cons., Inc. v. Conlisk, 374 F.Supp. 1010,1011, 1015-1018, and the Supreme Court have placed exacting standards on the U.S. v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1623, decision concerning the proof of a substantial governmental interest.

No vital government interest could exist here save the possible government need to shield its less acceptable actions from the public. Such actions would stand malevolently against the concept of sovereignty resting with the people, and in stark contrast to the intent of the Freedom of Information Act, 80 Stat. 250, Sec. 3. The repugnancy of prior restraint is well described in Doe vs. McMillan, 412 U.S. 306,344,

93 S.Ct. 2018 (opinion of Rehnquist, J); New York Times v. U.S., 403 U.S. 713, 714, 91 S.Ct. 2140, 2141; Emerson, the Doctrine of Prior Restraint, 20 Law and Contemporary Problems, (1955) and The System of Freedom of Expression (1971).

The construction of 18 U.S.C. Sec. 701 as a restraint on petitioner's rights under the First Amendment stands it in great peril of being in conflict with the U.S. Constitution. "Contemporaneous construction of a statute is of no weight where it's repugnancy to the Constitution is apparent." Stillman v. Lynch 192 P. 272, 12 A.L.R. 552. Where the Constitution prescribes one rule and a statute another, the courts should declare that the Constitution prevails. Dred Scott v. Sanford 19 U.S. 393; Marbury v. Madison, 1 U.S. 137. The rule is fixed that in a proper case the duty to declare a law unconstitutional cannot be declined by the courts, regardless of their opinion as to the wisdom of the statute. Lake County v. Rollins, 130 U.S. 662, 9 S.Ct. 651 Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855; U.S. v. Butler, 297 U.S. 1, 56 S.Ct. 312; McNary v. U.S., 195 U.S. 27, 24 S.Ct. 769.

The fact that the violation of the Constitution is not a great one is no reason for permitting it. The degree to which the organic law is violated has no standing for it is the duty of the courts to guard the rights of the people with great jealousy. Patton v. U.S. 281, U.S. 276, 50 S.Ct. 253; Looney v. Crane Co., 245 U.S. 178, 38 S.Ct. 85.

I. B. STRAIN THE LAW BEYOND THE INTENT OF THE ENACTING LEGISLATIVE BODY?

There is ample authority to suggest that 18 U.S.C. Sec. 701 is overly broad and vague, and thus unconstitutional as constructed by the courts below: Tollett v. U.S. 485 F.2d 1094 (8CA 1973); Trop v. Dulles, 356 U.S. 86; Smith v. Goguen, No. 72-1254, March 25, 1974, 39 L.ed. 2d 605; Plummer v. Columbus, 38 L.ed. 2d 3; Gooding v. Wilson, 31 L.ed. 2d 408, etc.

However, it is the fervent hope of Petitioner that Section 701 can be given the interpretation of the enacting legislators, hence preserving its Constitutionality and relieving it from distorted or strained construction. In Piper v. Willcuts, C.C.A. Minn. 64 F.2d 813; Dickey v. Raisin Production Zone 1, 151 P.2d, 505, 324 U.S. 869, the opinion of the court upheld an age-old dictum that the intention of the Legislature, embodied in a statute, is the law. "The court should give a construction which will render the statute valid....", Hunter v. Hunter, 180 F.2d 510, S.Ct. 234.

The court's long-standing and wise deference to the intergrity of the Legislature and their enactments has produced ample authority to sustain this opinion. The general rule is that by all means available, unless in contradiction to the Constitution, the interpretations or purpose of the Legislature as expressed in the statute should prevail. Vermilya

Brown Co. Inc., et al. v. Connell et. al., 69 S.Ct. 140, 335 U.S. 377; U.S. et. al. v. N. . Rosenblum Truck Lines, Inc., 62 S.Ct. 445, 315 U.S. 50.

All legitimate and reasonable sources of enlightenment should be used for construction. The court should not be limited nor should it bias the written words of the act when the declaration of purpose is expressed in clear and unambiguous terms, for it is the solemn declaration of the sovereign. The court should, if possible, place on the statute a construction which will not result in injustice, oppression, hardship or inconvenience. U.S. v. Universal C.I.T. Credit Corp., 73 S.Ct. 227, 334 U.S. 218; A. Magnano Co., v. Hamilton, Atty., 54 S.Ct., 599, 292 U.S. 40; Lovesi v. Commonwealth of Virginia, 92 S.Ct. 2469, 407 U.S. 922; Perry v. Commerce Loan Co., 86 S.Ct. 852, 383 U.S. 392; U.S. v. Bologna, 181 F.Supp. 706; Burnet v. Guggenheim, 53 S.Ct. 369, 288 U.S. 280; Shaituck v. Gauagher, 218 F.2d 428.

Appendix B of this petition contains the legislative history of 18 U.S.C. Section 701 from its first inception eminating in the Justice Department to its concluding action in D 39. Contemporaneous circumstances and the habits of the people should be considered. U.S. v. Congress of Industrial Organizations et. al., 68 S.Ct. 1349, 335 U.S. 106.

The court has stated that, "The title and heading may be resorted to as an ascertainment of legislative intent."

F.T.C. v. Mandel Bros., Inc., 79 S.Ct. 818, 359 U.S. 385. Also, a message from the executive submitting the subject matter of a proposed statute to the legislature may be referred to for meaning. Homer Elec. Assn., Inc. v. City of Kenai, 423 P.2d 285; Clendaniel v. Conrad, 35 S. Ct. 203, 335 U.S. 712.

18 U.S.C. contains at Section 700 several other statutes, each relating to the misuse of some type of substantive badge or emblem. Of long standing is the cannon of construction-in pari materia.

Petitioner prays that the strained, distorted, vague and overly broad construction rendered by the courts, Justice Department and IRS below will be rendered ineffectual through the scrutiny of historic record and precedent.

I. C. REQUIRE UNREASONABLE ALTERATION OF THE WORDS INSIGNIA, IDENTIFICATION AND BADGE, EITHER IN LEGAL OR COMMON ENGLISH LANGUAGE?

Failure to resort to the contemporary and historic meaning of the words Badge, Insignia, Identification Card, and Seal through recourse to Law Dictionaries, court dicisions, common use distionaries, and the expressed words of Congress, has resulted in such a distorted semantic alteration of the words that the subject is treated separately here. Authority for such interrogation is U.S. v. Universal C.I.T. Credit Corp., supra.

The construction given in courts below does not fall within the guidelines imposed by U.S. v. Harris, 106,269, 4 S.Ct. 601; State v. Wittles, 118 Min. 364 136 NW 883; Yu Cong. Eng. v. Trinidad 271 U.S. 500, 46 S.Ct. 619, and others. Nor does it meet the standards of U.S. v. Walter 263 U.S. 15, 44 S.Ct. 10; Sproles v. Binford 286 U.S. 374, 52 S.Ct. 581; Mutual Loan Co. v. Martell 222 U.S. 225, 32 S.Ct. 74.

In order to simplify the court's research, Petitioner has included identified dictionary and legal descriptions here:

Badge: "Something noticeable worn on the person to indicate his connection with some enterprise, person, lodge, club, society, or matter. A sign of authority,

such as the star of a policeman or other law-enforcement officer." (Ballentines Law Dictionary, 3rd Edition).

"A mark or cognizance worn to show the relation of the wearer to any person or things, the token of office or service." (Black's Law Dictionary)

Card "A token of membership in a labor union, political party, fraternal order, or a credit-guaranty organization." (Ballantine)

Colorable Imitation "In the law of trademarks, this phrase denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons." (Black's)

Identification "The means or act of identifying a person, an instrument, or property. Proof that a person or thing is the person or thing it is supposed or represented to be. Duval v. Atlantic Coast Line Railroad Co., 134 NC 331, 46 SE 750." (Ballentine's) (Black's does not refer to anything applicable here.)

Insignia "Coats of arms; armorial bearings; emblems of rank. Pins, badges or ribbons worn by members of a club. 6 Am. J.2d Asso. & C. § 17.

"In the days of chivalry and knight erranty, and at the present time, where distinctions are recognized by law, between wealth and other adventitious influences, and poverty or weakness, the adventurous and the great have adopted their

insignia, suggested by valorous achievement, or other causes. These are called their arms or family escutcheon, and are usually engraved on their seals. Kirksey v. Bates (Ala) 7 Port 529.

"As the term is used with reference to notarial seals, it means the armorial ensign of a state or political community intended to distinguish it from others, and which is usually transferred to its national flag or banner. Yet, perhaps a public flag cannot always be considered as a true indication of the arms of the country to which it belongs; for most countries have two banners--one borne by vessels of war, and the other by those engaged in commerce. Kirksey v. Bates (Ala) 7 Port 529." (Ballentine's)

"Ensigns or arms; distinctive marks; badges; indicia; characteristics." (Black's)

"Distinguishing marks of authority office, or honor; badges; emblems; as, the insignia or royalty or of an order. Typical and characteristic marks or signs by which anything is distinguished; as, the insignia of trade." (Webster's International 1955--pictured and listed below these definitions are 29 military insignia.)

Official Seal "The seal affixed to a document by a public officer. Kirksey v. Bates (Ala) 7 Port 529. The instrumentality for affixing a seal that goes with a public office as a part of the paraphernalia of office. Such a seal

must contain enough to show the official character of the officer and must be capable of making a distinct and uniform impression upon the paper upon which it is used, or on some tenacious substance such as was attached thereto, capable of receiving an impression. A seal in the form of a scrawl of the pen does not fill the requirements of an official seal. 47 Am.J. 1st §7." (Ballentine's) (Emphasis added)

Seal "Symbol of authenticity. An impression made by means of an instrument or device, such as an engraved metallic plate, on wax or wafer affixed to an instrument, or directly upon the instrument itself. A scroll or other distinguishing mark placed upon an instrument as a seal. The word "seal" placed upon an instrument. The abbreviation 'L.S.' placed upon an instrument as a legal seal. 47 Am.J. 1st Seals §4." (Ballentine's)

"An impression upon wax, wafer or other tenacious substance capable of being impressed. Solon v. Williamsburgh Sav. Bank, 114 N.W. 132, 21 N.E. 168.

"A particular sign, made to attest in the most formal manner, the execution of an instrument.

"Merlin defines a seal to be a plate of metal with a flat surface, on which is engraved the arms of a prince or nation, or private individual, or other device, with which an impression may be made on wax or other substance on paper or parch-

ment in order to authenticate them. The impression thus made is also called a 'seal'. Repert. Mot 'Sceau.'

"'Seals' serve as an authentication of an instrument and also as the badge of a specialty. Caruthers v. Peninsular Life Ins. Co., 150 Fla. 467, 7 So.2d 841, 842." (Black's)

A seal generally is an impression made by means of an instrument or device, such as an engraved metallic plate or stone, on wax or wafer affixed to an instrument, or directly upon the instrument itself. At common law and in early times, the impression was on wax or some other tenacious substance capable of receiving and retaining it; Cromwell v. Tate (Va) 7 Leigh 301; and this form has to some extent been retained up to the present time. Perrine v. Cheeseman, 11 NJL 174.

In the legislative entries concerning the writing of Section 701, Appendix B, there is an obvious intent to prevent the unauthorized possession of a physical entity,--badge, identification card or OTHER insignia. The letters from the Attorney General obviously describe a concern with the possession of substantive things, --badges, identification cards, insignia as for military, public health, law enforcement and so forth, such that a blind person could readily identify it by feel. The 1939 addition to the act simply includes a

proviso to prevent counterfeiters or forgers from having a readily available photograph or other reproduction with which to spend considerable time copying the design for engraving or stamping on a badge, identification card or other insignia.

An equivalancy exists between "badge". "identification card" and "insignia" in their substantive sense. The removal of the word insignia from association with badge and identification card in order for the IRS, Justice Department and courts below to secure an arrest and conviction is a gross insult to the intelligence and integrity of the Legislators who wrote the law, the Executive which prior to this time has asked for, and administered the law, and to this court. It renders the phrase "or other" meaningless and denies the dictates of English authority.

In every instance the framers of the law used the initial or primary definition of the word "insignia" in order to tie it securely to the words "badge", "identification" and "card".

The language of a statute must be construed in accordance with its meaning at the time of its enactment. Amos v. Prom, Inc., 117 F.Supp. 615; Whitney v. Wyman 11 Oho. (101 U.S.) 392, 25 L.ed. 1050; Steward v. Kahn, 11 Wall. (78 U.S.) 493, 504; Perry v. Commerce Loan, supra.

Please note that in the Tenth Circuit decision, Appendix A., and in the

trial court proceedings the words "seal", "badge", and "insignia" were repeatedly interchanged. From authorities herein it is apparent that such interchange is permissable between "seal", "badge", and "identification card" and "insignia".

There is substantial authority to indicate what the intentions of the enacting legislature were and how the Executive branch of government, through their officers and prosecutors, intended to use the law. A history of prosecution under 18 U.S.C. Sec. 701 for possession does not exist except for possession of an identification card or badge, and those involving the military. "The contemporaneous construction of a statute may be found by noting the construction given by the officers or departments charged with executing it.": C.J.S. 359; U.S. v. Cooper Corp. 61 Sct. 742; St. John v. New York, 201 U.S. 633, 50 L.ed. 898, 26 S.Ct. 554; U.S. v. Reynolds 235 U.S. 133, 59 L.ed. 162, 35 S.Ct. 86; Mid-Continent Petroleum Corp. v. N.L.R.B. Ca. 74 S.Ct. 71, 346 U.S. 858; Amos v. Prom Inc., supra; Tuttle v. National Bank 44 N.E. 984; Myles Salt Co. v. Iberia and St. M. Drainage District, 239 U.S. 478, 60 L.ed. 392, 36 S.Ct. 204.

Appendix B, No. 6, is an exact copy of the Library of Congress' regulations concerning the photocopying of government materials.

For good cause shown, petitioner believes the proper reading of Section 701 will show that no crime has been committed by him and that the intentions of the legislators were honorable.

II. DOES THE DENIAL OF A JURY TRIAL TO PETITIONER ON STATUTORY PETTY OFFENSE GROUNDS:

II. A. EXTEND THE COMMON LAW BEYOND THE TRADITIONAL BOUNDS?

The denial of a Jury Trial to Petitioner on statutory petty offense grounds results in the imposition, upon conviction, of penalties which far exceeded the concept of petty under common law.

"As respects right to jury trial, the rule permitting greater safeguards of property rights than right to personal liberty, based on the fact that punishment for misdemeanor may in some cases involve a trifling restraint of liberty and a property loss which is ruinous, is limited to those cases where consequential and immediate effects are disproportionate." C.S.S. 77; People v. Herk, 44 N.Y. 5 2d 444. For prescribing penalties which prevent jury trial see Saco v. Wentworth, 37 ME 165.

Petitioner here states that the property loss which will most likely be incurred by Petitioner will include loss of residence, loss of employment with little change of re-employment, and a direct personal loan loss in excess of $11,000, FR.

II. B. APPLY WHEN PETITIONER WAS GRANTED A JURY TRIAL AT THE ORIGINAL ARRAIGNMENT, AND SUBSEQUENTLY HAD THE JURY TRIAL WITHDRAWN TWO DAYS PRIOR TO THE TRIAL, THUS DENYING PETITIONER THE FIFTH AMENDMENT RIGHT TO DUE PROCESS OF LAW?

Petitioner was granted a jury trial on July 26, 1973, by Motion, and proceeded under that assumption until two days prior to the trial, March 11, 1974. Having prepared for a jury trial with all its securities, rather than for a summary proceeding before a known adversary, Petitioner was deprived of due process under the Fifth and Sixth Amendments. The court's procedural error prejudiced defendant's defense. Farmer v. Loo-Fourrow, 267 P.2d 113, 41 ALR 2d 774.

III. WERE PETITIONER'S RIGHTS UNDER THE FOURTH AMENDMENT TO BE PROTECTED AGAINST UNREASONABLE SEARCH AND SEIZURE AND WARRANTLESS ARREST VIOLATED?

Petitioner's rights to be protected under the Fourth Amendment against unreasonable search and seizure and warrantless arrest were grievously violated.

The Affidavit for Issuance of Warrant, R2, in support of the misdemeanor information and issued April 20, 1973, fails to set forth sufficient personal knowledge of facts by the U.S. Attorney. Giordenello v. U.S., 357 U.S. 480.

At Page 75, Vol. III, Agent Stephens testified:

Q: Did you discover any violations of the Internal Revenue Code?

A: No Sir.

Agent Stephens, the undercover operative for the IRS would have been the man to know whether the Petitioner had ever violated the IRS Code. His statement under oath clears Petitioner of any possible charges under 26 U.S.C. Sec. 7206 or 7212 and refutes the Circuit Court's ascertion on page 7, Appendix A., that Petitioner could have been charged under any IRS STATUTES. As to 18 U.S.C. Sec. 506, it describes the use or manufacture of false seals, and is not appli-

cable for the reasons stated under I.(C.) supra; and that no action was initiated by Petitioner towards the use of the notices; and possession was not with fraudulent intent. From Volume III, p. 59 Agent Stephens testifies:

A: Publicity is one of the main goals.

Q: And it was discussed...that the purpose of these notices...was to be used to call the public's attention to the IRS?

A: That is one of the purposes.

From Vol. III, p. 88: By stating that the question has been answered to their satisfaction the Court and prosecutor affirmed that the only reason for using the seizure notices was to advance philosophical ideas.

No grounds for a Probable Cause arrest for felony were ever evidenced against Petitioner. In Johnson v. U.S., 333 U.S. 10, the Court held that evidence obtained by search should have been suppressed on grounds that the search was made without a warrant. The IRS knew of the activities of Petitioner in this matter for at least 14 days prior to the arrest. A search without warrant should not be made where the opportunity exists for issuance of one. Carroll v. U.S. 267 U.S. 132; Angello v. U.S. 269 U.S. 20; U.S.v. Viale, 312 F.2d 595 (2d Cir. 1963); Title 28, U.S.C.A. 7608 (b); Price v. U.S. 262 F.2d 684; Reed v. State,

25 S.E. 2d 692; Yancey v. Fidelity & Casualty Co., 100 S.E. 2d 653, certiorari denied 213 Ga. 903, 102 S.E. 2d 497.

There exists grave doubt that any magistrate would have signed a warrant on such untenable grounds.

IV. WAS SELECTIVE ARREST AND PROSECUTION AMOUNTING TO BAD FAITH AND HARRASSMENT EMPLOYED BY THE IRS IN ORDER TO SUPPRESS LEGITIMATE PROTEST AND IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE FIRST AND/OR FIFTH AMENDMENTS?

Petitioner and Bray were singled out by agents of the IRS for harrassment and prosecution. Petitioner has been a leader in the citizen's quest for more responsible government for over six years. This has placed him in strong adversary position viz. a viz. certain government agents.

The court in Krishna v. Conlisk, supra, 1014, found the government participating in bad faith harrassment of the plaintiffs for preventing their assembly and soliciting funds. Also the court found that there was no valid state interest being served which would justify the inhibitions the ordinance imposed on First Amendment rights, page 1016. At page 1017, the court said, "There is no question as to the legitimacy of these significant state interests. These ordinances, however, do nothing to further those interests except by the most strained construction and overbroad effect. Like the peddling ordinances, neither of these provisions in any way regulates the behavior of persons authorized to solicit."

The Petitioner's case hinges closely to the Krishna case, supra, and the Alderman case, supra.

See also Cantwell v. Connecticut, supra; Alderman v. Philadelphia Houseing Authority, supra; Polk v. The State Bar of Texas 374 F.Supp. 784 (1974)... "The state had no interest to punish and issuance of reprimand would be violative of First Amendment rights."

Appendix C. contains an affidavit and exact duplicate of an IRS seizure notice - WITH SEAL - which the IRS gave Miss Fightmaster and then duplicated for her. This absolutely demonstrates the propensity of the IRS toward PROSECUTING CERTAIN CITIZENS for doing what their policy and employees sanction. Petitioner is the victim of invidiously selective enforcement and has been forced to curtail his tax protest meetings for fear of threatened arrests and other forms of harrassment. Krishna v. Conlisk, supra, 1013.

V. WAS THE TRIAL JUDGE BIASED AGAINST BRAY AND /OR PETITIONER, THUS DEPRIVING THE PETITIONER OF HIS RIGHT TO AN IMPARTIAL TRIAL AS GUARANTEED BY THE SIXTH AMENDMENT, THE PROVISIONS OF 28 U.S.C.A. 144, AND DUE PROCESS OF LAW?

For over three years the Petitioner has co-led with Bray a group which seeks the impeachment of Federal Judge Willis Ritter on the grounds of gross violations of the Cannons of Judicial Ethics. Public media speaking about a petition designed to effect an empeachment in 1972-73 has placed Petitioner in an adversary position with Judge Ritter.

Chief Judge Ritter was reviled by Petitioner and Bray, thus causing a hostile atmosphere in the courtroom. 46 Am. Jur. 2d. Cases are to be tried by unprejudiced and unbiased judges. Section 166. Where friction of a personal nature has developed, the Judge should disqualify himself, Section 172.

In 21 Am. Jur. 2d, Criminal Law, persons charged with a crime have a fundamental right to a fair and impartial trial and the duty to provide same rests with the court, Section 234; a fair trial means trial before an impartial judge in an atmosphere of judicial calm, Section 235. See U'Ren v. Bagley, 245 P. 1074. Where fairness was flouted the indictment was set aside. Saldana v. U.S. 365 U.S. 646.

"A judge must accept as true every allegation of fact made as a predicate of belief." Morrison v. U.S. (D.C. Tex. 1969, 321 F. Supp. 286 affirmed 432 F. 2d 1227, certiorari denied al S.Ct. 1959, 401 U.S. 945, 28 L.ed. 2d 227; E. G. Wolfoson v. Pamieri, C.A.N.I. 1968, 396 F.2d. 122.

Petitioner could fairly believe that Judge Ritter would be biased against Petitioner as contemplated in 28 U.S.C.A. 144, Cranston v. Freeman, S.C. N.Y. 1968, 190 F. Supp. 785, Reversed on other grounds 428 F.2d 822, certiorari denied 91 S.Ct. 937, 401 U.S. 949.

Petitioner was denied the right of effective cross examination, David v. Alaska, 39 L.ed. 2d 347 at page 555.

A tribunal to try cases must not only be unbiased but must avoid the appearance of bias. Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145.

By making charges against Petitioner on a repeated basis, Vol. III, pages 36 - 164, and not predicating decision on the matter being tried, the trial judge denied Defendant the opportunity to be properly accused, and to plead and prepare for defense. U.S. v. Patterson, 456 F.2d 1135 (1972).

Petitioner was unable to take witness stand in order to refute the statements of IRS and FBI agents. The hateful atmosphere made Petitioner fearful of further charges and unreasoned contempt of court.

Be advised that Petitioner did not say one word during the entire trial.

VI. SHOULD PETITIONER'S MOTION FOR SEVERANCE HAVE BEEN GRANTED?

Rule 14 F.R.Cr. P. states, "Must be alert to accord to every defendant a completely fair trial." Therefore, the 5 CA in Barton v. U.S. 263 F.2d 894, was reversed and remanded since the District Court had stated, "I believe we can control the evidence without severance." The actions of Bray and Wray proceeding Pro Se for seven months after arraignment left Petitioner in an uncontrolled situation. Motion for Severance was timely filed on adequate grounds, R20.

At least a trial before an unbiased judge is essential to due process. Johnson v. Miss., 403 U.S. 212, reversed and remanded; Mayberry v. Penn., 400 U.S. 455.

VII. WAS PETITIONER'S RIGHT TO A SPEEDY TRIAL UNDER THE SIXTH AMENDMENT ABROGATED WHEN THE GOVERNMENT FAILED TO BRING THE CASE TO TRIAL?

Petitioner was arrested on April 19, 1973 and charged by petty offense information on April 20, 1973, R8. Arraignment was on July 26, 1973 at which time Petitioner motioned for and was granted a jury trial, Vol. I. Jury trial was set down for July 30, 1973; Vol. I, p. 15, R26, R27.

Notice vacating the jury trial for July 30, 1973 was mailed July 27, 1973, Vol. V. Petitioner drove over 200 miles round trip from his home in order to appear because notice had not been received.

A notice was mailed January 7, 1974, for Calling of Calendar and Jury Trial on January 9, 1974, Vol. V. Petitioner cancelled a trip with his employer and drove the 200 miles again, only to have the trial vacated.

On January 22, 1974, after Petitioner's February flight assignments had been published, a notice for Hearing on Motions for Severance and to Suppress was set for February 4, 1974, Vol. V. Petitioner re-scheduled his flying for the month of February and appeared. Once more the Jury Trial and hearing of motions was delayed.

On March 11, 1974, Petitioner appeared along with council and co-defendants for Hearing of Motions. Petitioner's Motions for Severance and Motion to Dismiss for lack of speedy trial were both denied.

At no time did Petitioner delay the proceedings. Petitioner was completely prepared for jury trial by July 26, 1973, seven months prior to the actual trial. The record reflects that a period in excess of five and one-half months went by after arraignment without Petitioner's co-defendants delaying the proceedings at all. During this time the government took absolutely no action to bring the case to trial.

The delay was excessive, the trial being eleven months after date of arrest. Rule 48 (b) of the Federal Rules of Criminal Procedure authorizes dismissal of an information if there is "unnecessary delay" in bringing defendants to trial. See post arrest situation, U.S. v. Marion 404 U.S. 307.

Petitioner was required to file written reports of his flight schedule, R18, R19, R31, R 42, R69, for this entire period, during which time he also had to make repeated changes in his work/flight schedule due to the short-notice appearances required by the court. While performing his flight duties outside this country for periods of ten days and more, Petitioner was under continuous emotional stress due to the uncertainties involving

scheduling of proceedings. Not knowing how co-defendants would proceed and what the court's reactions to the three co-defendants would be created a very tense and frustrating situation on an everyday basis.

In Strunk v. U. S., 412 U.S. 434 (1973) ten months was too long a delay and the Supreme Court set aside the judgement, vacated the sentence and dismissed the indictment, saying "The speedy trial guarantee recognizes that prolonged delay may subject the accused to an emotional distress that can be produced and result in the ordinary person from uncertainties."

Petitioner's Motion to Dismiss, R66, should have been granted. It has been held in Dickey v. Florida, 398 U.S. 30 (1970) by Justice Brennan that the Demand Waiver Rule should be rejected. In Barker v. Wingo, 407 U.S. 514, Justices White and Brennan declared that the government could not justify delay in ordinary criminal cases simply by asserting that because its resources are limited each case must wait its turn. The delay, they believed, should relate only to the facts themselves.

Petitioner is unable to carry the burden of delay beyond his own control, for the government has caused it.

C O N C L U S I O N

Petitioner prays that the petition for Writ of Certiorari be granted the Decisions below are not in accord with applicable Decisions of this Court and the Legislature of the United States.

Respectfully submitted,

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Petitioner, In Pro Per